IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12272 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HEIR OF DECD.KANTABEN WD/O.THAKORBHAI PARESHBHAI

Versus

STATE OF GUAJRAT THR' SECRETARY & 1

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Appearance :

MR RM CHHAYA for Petitioner(s) : 1,
MR M.R. MENGADE AGP for Respondent(s) : 1,
MR PRASHANT G DESAI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/09/2005

ORAL JUDGMENT

1.Rule. Mr.M.R. Mengade, learned AGP waives service of rule on behalf of the respondent No.1. Mr.Prashant Desai, learned advocate waives service of rule on behalf of the respondent No.2.

2.With the consent of the parties, the matter is taken up for final hearing today.

3.In this petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ, order and/or directions, directing the respondents authorities to implement the Town Planning Scheme No.6 (Majura-Khatodara), Surat (hereinafter referred to as “the T.P. Scheme No.6” for convenience) qua the land belonging to the petitioner by directing the respondents

authorities to hand over the actual, physical and vacant possession of the remaining Final Plot No.121 allotted to the petitioner as per the sanctioned TP Scheme. Alternatively, the petitioner has prayed for appropriate writ, order and/or directions directing the respondents authorities to hand over actual and vacant possession of any other plot of the same area within the TP Scheme area of the TP Scheme No.6.

4.The petitioner and other co-owners were the owners of Original Plot No.37, situated at Majura Khatodara, Surat. That the said land was part of the TP Scheme No.6. Under the sanctioned Final Town Planning Scheme against the total holding of 35,533 sq.mrs, of the land, the petitioner is allotted Final Plot No.121 admeasuring 27,595 sq.mtrs. It is required to be noted that the Final Plot No.121 is out of Original Plot Nos.44, 46 and 47. It is submitted that the petitioner is actually

handed over the possession of the part of Final Plot No.121 from the Original Plot Nos.46 and 47. However, so far as part of Final Plot NO.121 from the land bearing Original Plot NO.41 and 44 is concerned, the possession of the same is not handed over to the petitioner and t that extent, the TP Scheme NO.6 is not fully implemented and therefore, the petitioner has submitted that the petitioner has time and again requested the respondents authorities to implement the TP Scheme and hand over the actual and physical possession of the entire Final Plot No.121. Still, the TP Scheme is not implemented fully and therefore, the petitioner has preferred the present petition for the aforesaid prayers.

5.Mr.RM Chhaya, learned advocate appearing on behalf of the petitioner has submitted that once the TP Scheme has become final, it is the duty of the appropriate authority – town planning officer to implement the TP Scheme and

hand over the actual and physical possession of the Final Plot which is allotted to the petitioner under the Final Town Planning Scheme. Mr.Chhaya has relied upon the judgement of the Hon'ble Supreme Court in the case of Municipal Corporation for the Greater Bombay and another Vs. Advance Builder Pvt.Ltd., reported in AIR 1972 SC 793. He has also relied upon the judgment of this Court in the case of Amarsi Anadi Thakor Vs. State of Gujarat, reported in 2004 (7) GLH 127, wherein this Court has taken a view that it is the duty of the authorities under the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as “the Act” for short) to implement the TP Scheme and hand over the actual and physical possession of the plot allotted to the concerned person under the TP Scheme. Therefore, it is requested to allow the present petition.

6.Mr.Prashant Desai, learned advocate appearing

on behalf of the respondent No.2 – Surat Municipal Corporation has submitted that so far as the part of the Final Plot No.121 from the land bearing Original Plot Nos.46 and 47 are concerned, the petitioner is already handed over the actual and physical possession. However, so far as that portion of the land which is from Original Plot Nos.41 and 44 is concerned, there are other occupants and the respondent No.2 has already issued notices under sec.68 of the Act directing them to vacate the land in question so that the said land in question can be allotted to the petitioner, which is forming part of the Final Plot No.121. He has further submitted that last notice is issued by the respondent No.2 authority on 26/7/2005 and the respondent No.2 is trying his best to implement the TP Scheme fully.

7. Heard the learned advocates appearing on behalf of the parties.

8.Having heard the learned advocates appearing on behalf of the parties and considering the material on record, it is not in dispute that the TP Scheme No.6 has become final. It is also not in dispute that the petitioner is allotted Final Plot No.121. Under the Final TP Scheme, the petitioner is entitled to the actual, physical and vacant possession of the Final Plot No.121. Not handing over the possession of the Final Plot allotted to the petitioner can be said that the respondent No.2 has failed to discharge its statutory duty to implement the TP Scheme No.6 which has become final. Under the provisions of the Act, it is the duty of the Town Planning Authority to fully implement the TP Scheme and hand over the actual, physical and vacant possession of the land which is allotted to the concerned person under the Finalized Town Planning Scheme. In the judgment of the Hon'ble Supreme Court in the case of Greater Bombay and another (Supra)

and judgement of this court in the case of Amarsi Sanaji Thakor (Supra), it is held that it is the duty of the Corporation and the Town Planning Authority to perform their statutory duty and to implement the Town Planning Scheme fully and hand over the actual, physical and vacant possession of the plot which is allotted to the petitioner. Considering the aforesaid facts and circumstances, and the judgments of the Hon'ble Supreme Court as well as this Court, the present petition is required to be allowed.

9. For the reasons stated hereinabove, the petition succeeds. The respondents more particularly the respondent No.2 is hereby directed to fully implement the Town Planning Scheme No.6 (Khatodara -Majura), Surat and to hand over the actual, physical and vacant possession of the entire Final Plot No.121 to the petitioner within a period of three months from the date of receipt of this order. Rule is

made absolute to the aforesaid extent. However, there will be no order as to costs. D.S. Permitted.

(M.R. SHAH,J.)

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